HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.26115 of 2006

Dated 11th December 2006

Between:
M. Hanmanth Rao, New Boiguda, Secunderabad.

…….Petitioner.

And

The Municipal Corporation of Hyderabad rep. By its Commissioner and others.

……Respondents.

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.26115 of 2006

O R D E R:

The matter is coming up for admission.

Smt Jyothi Kiran, learned Standing Counsel takes notice on behalf of R1 and R2.

Heard Sri P.Vinod Kumar, learned counsel representing the petitioner.

The impugned notice reads as hereunder:-

"[NOTICE U/s.402 OF H.M.C.ACT OF 1955]

To
Sri Hanumanth Rao
Officer M.C.H Park
65/09/A/1, New Boliguda, Secunderabad.
Sir/Madam,

Sub:- MCH- T.P.S - Circle No.7 – SECUNDERABAD DIVISION – Encroachment on the open space earmarked for park in the approved layout *Adjacent to H.No.6-5-109 'D' Removal – Reg.*

Ref:- Orders of the Hon'ble High Court of A.P. dt.27.9.06 in Writ Petition No.15188/06 filed by Sri Pola Reddy R/o. Sreepuram Colony, Hyderabad.

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On the Writ Petition filed by Sri Pola Reddy, Senior Citizen, Sripuram Colony, Malakpet, Hyderabad, Hon'ble High Court of A.P. ordered on 27.9.06 that MCH should initiate steps for vacating unauthorized occupation/encroachment of the lands, which were earmarked for public parks or for public recreation. It is also further ordered that reasonable opportunity may be given to the encroachers to defend themselves against the proposed removal of unauthorized encroachments/occupations of municipal lands/public lands.

During the course of inspection it is noticed that you have encroached upon the open space earmarked for park/public purpose in the approved layout o f *Adjacent to H.No.6-5-109 'D'* vide No._____dt._____and constructed structure (s) consisting of *ground floor.*

Therefore, you are hereby directed to remove the above said encroachment by *three (3) days.* failing which MCH will remove the encroachment departmentally and the cost incurred will be collected from you as per HMC Act, 1955.

Sd/-

For COMMISSIONER, M.C.H."

The writ petition is filed for a writ of Mandamus directing the respondents not to disturb the petitioner's possession by setting aside the impugned Notice No.01/CP/W6/C7/TPS/MCH/2006, dated 7.12.2006

declaring the action of the respondents as illegal, arbitrary, unconstitutional, without jurisdiction and violative of the principles of natural justice and to pass such other suitable orders.

As can be seen from the impugned notice straight away removal of encroachment had been ordered giving three days time without affording any opportunity. Several factual details are narrated in the affidavit filed in support of the writ petition.

The said factual aspects need not detain this Court any further since inasmuch as it is stated that no opportunity was given to the petitioner, the impugned notice to be treated as show cause notice and the petitioner is at liberty to raise all objections inclusive of all the grounds raised in the present writ petition in response to the said show cause notice within a period of two weeks from the date of receipt of a copy of this order and the respondents to consider such objections and to take appropriate further action in accordance with law. It is need less to say that till any decision is taken status quo obtaining as on today shall be maintained.

With the above directions, the Writ Petition is accordingly disposed of. No order as to costs.

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(P.S. NARAYANA, J)

Dated 14th December 2006.
mrb